THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24013 OF 2005

% 13.12.2005

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Between:

D.Raja Ram

…Petitioner

And

The Divisional Electrical Engineer, Operations Division,

Andhra Pradesh Central Power Distribution Company Ltd.,

Nandyal & another

…Respondents

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! Counsel for the Petitioner: Sri R.Ananda Mohana Rao

^ Counsel For The Respondents: Standing Counsel

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1969 A.P. 234

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O R D E R:

1. The petitioner is working as Assistant Lineman, in the Andhra Pradesh Central Power Distribution Company Limited. The first respondent issued a memo, dated 01.8.2003, pointing out two alleged irregularities, on the basis of the information received from the second respondent, vide his memo dated 24.7.2003. It was alleged that the billing for two service connections, within the jurisdiction of the petitioner, was being done, without there being a meter, and that the service meter was not fixed to one consumer, even after he handed over a Demand Draft of Rs.520/-. The petitioner submitted his explanation on 18.8.2003. On a consideration of the same, the first respondent imposed the punishment of postponing of two annual increments, without cumulative effect, against the petitioner, through the memo dated 6.9.2003. Aggrieved thereby, the petitioner preferred an appeal before the second respondent. The appeal was rejected on 20.12.2004. The said orders are challenged in this writ petition.

2. Sri R.Ananda Mohana Rao, learned counsel for the petitioner, submits that the very initiation of the proceedings against the petitioner was illegal, inasmuch as the first respondent indicated the proposed punishment in the charge memo itself. He further contends that the first respondent relied upon some material, called for from different officials, in holding the petitioner guilty and imposing the punishment.

3. Learned Standing Counsel for the respondents, on the other hand, submits that mere indication of punishment in the show-cause notice is not fatal to the proceedings. He submits that the petitioner was given adequate opportunity to submit explanation to the charge memo, and no exception can be taken to the impugned orders.

4. Two issues arise for consideration in this writ petition. The first is as to whether the charge memo issued to the petitioner is vitiated, in law. The second is as to whether the first respondent committed any illegality, in holding that the charges

leveled against the petitioner proved, and imposing the punishment.

5. As for the first contention, it needs to be seen that in his charge memo dated 1.8.2003, after indicating the charges against the petitioner, the first respondent observed as under:

> "The above lapses/Misconduct are punishable as per APSEB (Now A.P.TRANSCO/APDPDCL) revised Conduct Regulation 4-xxx on the part of Sri D.Raja Ram, Assistant Lineman, Operation Section, Uyyalawada. The undersigned has come to the provisional conclusion of postponing two annual increments without cumulative effect."

The petitioner was required to show-cause as to why the said punishment shall not be imposed. It is true that the ultimate action was taken, only after considering the explanation of the petitioner. But, the indication of punishment, even while calling for the explanation, would have its own impact on the entire proceedings. This issue was considered by this Court in ***M.CHINNAPPA REDDY V. STATE.*** After referring to the judgments rendered by this Court, as well as Supreme Court, on the issue, it was held as under:

> "It is now fairly settled that at the initial stage when charges are framed and served upon the delinquent officer, the punishing authority or the inquiring officer should not propose what punishment ultimately he is to be given. That is not the stage when any opinion can either be formed or expressed. It amounts to prejudging the issue, which is always likely to create misapprehension in the mind of the delinquent officer. It is only at the stage when after a proper enquiry the punishing authority forms an opinion that the accused officer has committed the offence that he could propose the punishment and ask the delinquent officer to explain as to why that punishment should not be imposed. At the initial stage, if the charge framed indicates the proposed punishment, it vitiates the proceedings. The above said decisions clearly decide that point, and with respect, I follow those decisions."

The principle laid down by this Court squarely applies to the facts of this case. Therefore, the issue deserves to be answered in favour of the petitioner.

6. Coming to the second aspect, it may be noted that the first respondent did not

choose to order any departmental enquiry, obviously because he proposed to inflict a minor punishment. In such an event, the only basis for the conclusions to be arrived at by the first respondent, ought to have been the charge memo, the explanation submitted by the petitioner, and such of the material, as was made available to the petitioner, in this regard. A perusal of the impugned order discloses that soon after receiving the explanation from the petitioner, the first respondent called for a report from the Field Officers. It is on consideration of the report so received, that the charges against the petitioner were held proved. Therefore, on this account also, the impugned order gets vitiated.

7. For the foregoing reasons, the writ petition is allowed, and the impugned orders are set aside. There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

Dt.13th December 2005

L.R.copies be marked.

(B/o)

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